

Appl. No. 10/698,153  
Arndt. dated November 20, 2006  
Reply to Office Action of August 23, 2006

US20030321

### REMARKS

#### **Overview**

Claims 1-24 remain in the application, and a new claim 25 has been added. Claims 1 and 16 have been amended. Reconsideration and passage to issuance is respectfully requested.

#### **Claim Rejections**

Claims 1-24 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication Number 2005/0076938 (Jordan) in view of either U.S. 4,985,106 (Nelson) or U.S. 5,965,851 (Herreman). Applicant respectfully traverses the rejections and requests reconsideration of the claims.

#### **Claims 1-24 are not rendered obvious by Jordan in view of Nelson or Herreman.**

When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

- (A)The claimed invention must be considered as a whole;
- (B)The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C)The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D)Reasonable expectation of success is the standard with which obviousness is determined.

*Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986). MPEP 2141.01

Applicant respectfully submits that the §103 rejection of the presently pending claims is not a proper rejection. The Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than the Applicant's own specification. Rather, only the conclusory statement that "it would have been obvious to one having skill in the art to substitute for the sound attenuator means in Jordan, a sound attenuator as taught by either Nelson or Herreman, since this is considered to be a mere substitution of functional equivalents."

It is impermissible to use the claimed invention as a road map to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Further, it

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is impermissible to choose elements from the references to support a particular position, to the exclusion of other parts necessary which provide a full appreciation of what the references suggest to one of ordinary skill in the art.

The primary reference, Jordan, is concerned with sealing a gap 140 between a pivoting dishwasher door 36 and a lower panel 130. Paragraph [0028] of Jordan states, "In order to prevent, or at least significantly limit, sound emanating through gap 140, a flexible sealing member 145 extends across and effectively closes gap 140. That is, the combination of sound tray 130 and flexible sealing member 145 effectively covers a region below dishwasher door 36 and supporting surface 6."

Herreman teaches of an insulation system which includes a porous sound absorbing fiberglass layer 34 and an asphalt layer 36 acting as a sound reflecting barrier. Herreman proposes usage of the insulation system on a dishwasher in the form of a side insulation panel 24, top insulation panel 26 and front insulation panel 28. Herreman additionally proposes that the insulation could be applied to a kitchen cabinet wall 39 in the kitchen cabinets 20 in the space around the installed dishwasher.

The Nelson reference proposes barrier pads 76 and 77 of vibration dampening insulation material applied to the top and side of the dishwasher with sound insulation strips 78 and 79 being positioned on opposite sides of the motor compartment. The blanket insulation 81 includes insulation side panels 82 and 83, a top insulation panel 84 and a rear insulation panel 85. Nelson also shows an insulation structure wherein a sound barrier 48 and sound insulation 43a and 43b are combined.

Returning to Jordan and the proposed combination, Applicant respectfully submits that one skilled in the art of dishwasher design would recognize that coverage of the space between the bottom of the door 36 and the supporting surface 6, sound tray 130 in Jordan, must be performed with a material capable of functioning as an electrical enclosure as the motor, pump, heater and various other electrical components are housed therein. One skilled in the art would find the sound insulation structures of Nelson and Herreman to be insufficient for performing such a function, and therefore would have no reasonable expectation of successfully creating a dishwasher satisfactory for its intended usage. At best, one skilled in the art may attempt to replace the flexible sealing member

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145, 145', 145" with the insulation structure of Herreman or Nelson. In this arrangement, the sound attenuator would not substantially close the motor cavity opening as required by claim 1.

The sound tray 130 of Jordan exists in the art as an access cover for creating an electrical enclosure. Jordan seeks to provide a flexible barrier between this access panel, or sound tray, and the pivoting door.

In Applicant's invention, removable access panel 44 performs the function of the electrical enclosure. However, Applicant has recognized the need to prevent sound from reaching the access panel 44 and the gap between the door and the access panel. As stated in paragraph [0024] of Applicant's specification:

[0024] The function of the sound barrier is to block the transfer of sound from the motor cavity to the access panel. The density of the sound barrier results in very little to no vibration of the sound barrier in response to the sound waves in the motor cavity, thereby preventing the sound waves from reaching the access panel, which would otherwise vibrate and pass the sound into the room.

Moreover, and to the extent understood, none of Jordan, Herreman and Nelson, considered alone or in combination, describes or suggests the invention of claim 1. Specifically, none of the references alone or in combination disclose or suggest substantially closing the motor cavity opening with a sound attenuator comprising a sound barrier element and a sound absorbing element as required by amended claim 1.

Applicant respectfully submits that the materials described in Herreman and Nelson are insufficient for usage in the location of the sound tray 130 of Jordan, for at least the earlier mentioned reason of providing electrical isolation between electrical components and the user of the dishwasher. Thus, there is no reasonable expectation of success for replacing the sound sealing system of Jordan with the insulation materials of Herreman or Nelson.

Further, any modification of Jordan which leaves the sound sealing system (sound tray 130 and flexible seal 145) in place while additionally placing the insulation structure of Nelson or Herreman in substantial coverage of the motor cavity opening would be improper for at least two reasons. First, it would be impermissible usage of the claimed

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invention as a template to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Second, such a modification of Jordan would change the principle of operation of Jordan by absorbing and containing the sound before it reaches the gap that Jordan seeks to close.

For at least the above reasons, it is respectfully submitted that claim 1 is patentable over the cited references. As claims 2-15 depend from and further distinguish Applicant's invention, they are patentable as well.

It is respectfully submitted that method claim 16 is also patentable over the cited references for similar reasons to those presented with respect to claim 1. In claim 16, a sound attenuator comprising a sound barrier and a sound absorber is provided, and the sound attenuator is positioned in a covering relationship of a motor cavity opening which is closed by an access panel. As claims 15-24 depend from and further distinguish Applicant's invention, they should also be deemed patentable.

#### New claim 25

Applicant believes that new claim 25 is fully supported by the application as originally filed. No new matter is believed or intended to be involved. It is respectfully submitted that claim 25 is also allowable over the cited references as none of the cited references alone or in combination, teach or suggest the invention of claim 25. Claim 25 has similar structure to claim 1 and additionally provides for an access panel in a covering relationship with the motor cavity opening. The sound attenuator comprising a sound barrier element and a sound absorbing element is inserted into and substantially closes the motor cavity opening to attenuate the motor cavity sound before it reaches the access panel.

#### Conclusion

All of the stated grounds of rejection have been properly traversed or rendered moot. It is believed that a full and complete response has been made to all of the outstanding rejections, and Applicant therefore respectfully requests that this amendment be entered.

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Please charge Deposit Account No. 23-1660 in the amount of \$50 to cover the fee for new claim 25. No other fees or extensions of time are believed to be due in connection with this filing. However, please consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 23-1660.

It is respectfully submitted that the claims remaining in the application are allowable over the prior art of record. Early notification of allowability of all of the claims is respectfully requested.

Respectfully submitted,

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Dated: November 20, 2006

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Date: November 20, 2006

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